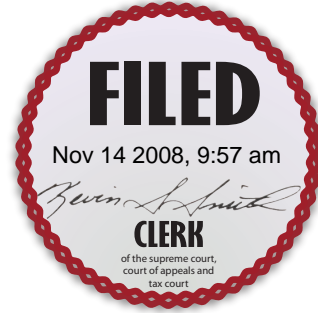


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

KEITH RIDER,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0802-CR-149
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark Stoner, Judge
Cause No. 49G06-0705-MR-90772

November 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Keith Rider was convicted of murder¹ after a bench trial and was sentenced to sixty years. He appeals, raising the following restated issue: whether the trial court abused its discretion when it allowed statements he made to the police regarding his mother's disappearance to be admitted into evidence.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 20, 2007, Nancy Rider was reported missing by her sister to the Indianapolis police. Officers were dispatched to Nancy's home with a search warrant to attempt to locate her. When the officers arrived and knocked on the door, they received no answer, so Sergeant Michael Himmel walked around to the back of the home and saw an individual through a window. Sergeant Himmel observed Nancy's son, Rider, on the bathroom floor and instructed him to open the door. Rider told the officer that he could not do so because he had been shot. The officer inquired as to who had shot Rider, and he replied that he had shot himself. The police then forced entry into the home and proceeded to the bathroom. They found Rider sitting on the bathroom floor with a gunshot wound to the head, a large amount of blood throughout the bathroom, and a gun on the floor. Despite the wound, Rider was lucid and coherent. Sergeant Himmel, handcuffed Rider for officer safety and simultaneously asked him, "where's your mother?" *Tr.* at 91, 93, 97. Rider replied, "I got into an argument, I shot her." *Id.* at 93. Sergeant Himmel then asked if she was "still with us," to which Rider stated, "[n]o she's dead." *Id.* at 96. Other officers then searched the rest of the house for Nancy, but were unable to find her. One of them called out to Sergeant

¹ See IC 35-42-1-1.

Himmel that he could not find Nancy, to which Rider stated, “she’s underneath clothes in the bedroom.” *Id.* at 98. Officers then recovered Nancy’s body underneath a pile of clothing in one of the bedrooms.

On May 24, 2007, Rider was charged with murder in the death of his mother. He filed a motion to suppress the statements he gave to the officers on January 2, 2008. A bench trial was held on January 7, 2008, and the motion to suppress was denied on that date. The trial court found Rider guilty of murder and sentenced him to sixty years. Rider now appeals.

DISCUSSION AND DECISION

Rider originally challenged the admission of his statements through a motion to suppress, but appeals following a completed trial.² As such, the issue is appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial. *Lundquist v. State*, 834 N.E.2d 1061, 1067 (Ind. Ct. App. 2005). “Our standard of review of rulings on the admissibility of evidence is essentially the same whether the challenge is made by a pre-trial motion to suppress or by trial objection.” *Id.* We do not reweigh the evidence, and we consider conflicting evidence, most favorable to the trial court’s ruling. *Id.* We must also consider the uncontested evidence favorable to the defendant. *Id.*

At Rider’s trial, the only statement that the trial court admitted into evidence was when Sergeant Himmel asked, “where’s your mother,” and Rider stated, “I got into an argument, I shot her.” *Tr.* at 93. Rider argues that the trial court abused its discretion when it allowed the statement he made regarding his mother’s disappearance to be admitted into

² We note that, although Rider filed a motion to suppress prior to his bench trial, the motion was not actually argued or ruled upon until after the State presented its case in chief at the bench trial.

evidence at his trial. He contends that he was subject to custodial interrogation when he made this incriminating statement and was not given his Miranda³ warnings as required. Rider claims that the admission of the statement by the trial court violated his rights to fundamental due process as guaranteed under the Fifth Amendment to the United States Constitution and Article 1, Section 14 of the Indiana Constitution.

A person who has been taken into custody must, before being subjected to interrogation by law enforcement officers, be advised of his rights to remain silent and to the presence of an attorney and be warned that any statement he makes may be used against him. *Loving v. State*, 647 N.E.2d 1123, 1125 (Ind. 1995). Any statements obtained in violation of this rule are generally inadmissible in a criminal trial. *Id.* Therefore, a defendant is only entitled to the procedural safeguards of Miranda if he is subject to custodial interrogation. *Lawson v. State*, 803 N.E.2d 237, 239 (Ind. Ct. App. 2004), *trans. denied*. A defendant must be both in custody and subject to interrogation in order for police officers to be required to give Miranda warnings. *Ritchie v. State*, 875 N.E.2d 706, 716 (Ind. 2007).

In determining whether a person was in custody or deprived of freedom such that Miranda warnings are required, we must inquire whether there is a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest. *State v. Hicks*, 882 N.E.2d 238, 241 (Ind. Ct. App. 2008). This determination is made by analyzing whether a person in similar circumstances would believe that he is free to leave. *Id.* We look to the objective circumstances and not the subjective views of the officers or the subject being

³ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

questioned. *Id.*

Here, the testimony of the officers showed that they went to Nancy's home to look for her pursuant to a search warrant as she had been reported as a missing person. When no one answered the door, Sergeant Himmel went to the rear of the home and observed Rider through a bathroom window. Sergeant Himmel instructed Rider to open the door, to which Rider answered that he could not because of a self-inflicted gunshot wound. The officers then forced entry into the home and found Rider on the bathroom floor with a gun nearby. Because of the presence of the gun, the knowledge that Rider had been shot, and the lack of knowledge as to whether any other individuals were present in the home, Sergeant Himmel handcuffed Rider for officer safety purposes. The trial court determined that Rider was therefore in custody for officer safety purposes. *Tr.* at 227. Based upon the evidence, we agree with the trial court's determination that Rider was in custody at the time that the statement was made as a reasonable person in similar circumstances would not believe that he was free to leave.

We must next determine whether Sergeant Himmel's question to Rider constituted police interrogation. Interrogation is defined as, "'express questioning and words or actions on the part of the police that the police know are reasonably likely to elicit an incriminating response from the suspect.'" *Ritchie*, 875 N.E.2d at 717 (quoting *White v. State*, 772 N.E.2d 408, 412 (Ind. 2002)). Here, the officers were present at the home in an attempt to locate Nancy as she had been reported as a missing person. When they arrived at the home, the officers had no reason to believe that Rider was involved in his mother's disappearance. After discovering Rider on the bathroom floor in close proximity to a gun and with an

admitted self-inflicted gunshot wound, Sergeant Himmel handcuffed Rider for officer safety. As he handcuffed Rider, he asked, “where’s your mother,” and Rider stated, “I got into an argument, I shot her.” *Tr.* at 93. The trial court concluded that this exchange did not constitute interrogation because the officers were conducting a missing person investigation at that time and were not investigating a crime. We agree. Sergeant Himmel’s inquiry was merely an attempt to determine where Nancy was. According to his knowledge at that time, he was not investigating a crime, but only trying to locate a missing person. We conclude that his question to Rider was not interrogation as it was not questioning that the police knew was reasonably likely to elicit an incriminating response, and therefore, was not subject to the Miranda safeguards. Therefore, the trial court did not abuse its discretion in allowing into evidence Rider’s statement, “I got into an argument, I shot her.”

Affirmed.

VAIDIK, J., and CRONE, J., concur.